IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7880 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHABHAI S PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1,
MS MAITHILI MEHTA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/11/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner, who was serving in the Police Department and has retired

has prayed for an appropriate order to quash and set aside the order dated 11th September, 1995 passed by the Home Department as conveyed in the letter dated 2nd October, 1995 by which, the department has refused to consider his past services as a Teacher i.e. for the period between 22.9.1959 to 14.6.1967 for the purpose of pension.

2. The facts leading to the filing of the present Special Civil Application are that the petitioner was serving as a Teacher at the Taluka Panchayat, Viramgam, and he worked for the period between 22.9.1959 to 14.6.1967. He was called for training on being selected by the Public Service Commission for the appointment as a Clerk on 7.2.1967 and the Taluka Development Officer, Taluka Panchayat, Viramgam, granted No Objection Certificate to join the said training. Thereafter the petitioner was relieved by the Headmaster of the school and the petitioner was required to pay Rs.96.50 ps towards Notice Pay in lieu of the resignation, which the petitioner

paid. Thereafter by order dated 15.6.1967 he joined in CID (Intelligence) in Police Department as a Junior Clerk and thereafter on attaining the age of superannuation he came to be retired. However, in the meantime, by application dated 3.1.1994 he has submitted an application to count his services of Primary Teacher for the purpose of pension and by communication dated 11.9.1995 the Home Department, State of Gujarat, turned down his request and he was communicated the said decision vide communication dated 2.10.1995 by the Director General. It is the case on behalf of the petitioner that the petitioner requested for re-consideration of the said decision pointing out the Government Resolutions, however, the said request was turned down again and therefore, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3. Relying upon the Government Resolutions dated 31.1.1990 and 28.8.1990 (Annexures - E & F,

Pages - 27 & 29), Shri P.V.Hathi, learned advocate appearing for the petitioner has submitted that there is no justification in not counting the services of the petitioner as a Primary Teacher for the purpose of pension i.e. his past services for the period between 22.9.1959 to 14.6.1967. He has also further submitted that in case of Shri R.Y.Ganchi and Shri D.K.Parmar of the very Department, where the petitioner was serving, past services have been considered/counted for the purpose of pension, however, so far as the petitioner is concerned, the same are denied and therefore, the action of the respondents are discriminatory and in violation of Article 14 of the Constitution of India.

4. The petition is opposed by the learned AGP relying upon the affidavit-in-reply in which, the respondents have relied upon the Government Resolution of 1978. Inspite of the order passed by this Court on 30.1.2006 by which the respondents were directed to file further

affidavit meeting with the contentions on behalf of the petitioner with regard to discriminatory treatment and to deal with the case of Shri R.Y.Ganchi and Shri D.K.Parmar, however, no reply has been filed. Not only that but even the Government Resolutions dated 31.1.1990 and 28.8.1990 which are relied upon by the petitioner and which is a part of the petition are also not deal with by the respondents.

5. Shri P.V.Hathi, learned advocate appearing for the petitioner has also relied upon the judgment of this Court dated 6.8.1999 rendered in Special Civil Application 8580 of 1989 whereby, the learned Single Judge of this Court has directed the Department to consider the past services of the Teacher for the purpose of pension.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the petitioner served

as a Teacher for the period between 22.9.1959 to 14.6.1967 under the Taluka Panchayat, Viramgam. While he was on duty, he was selected for the purpose of training and after obtaining No Objection Certificate from the concerned Department, he joined the training and thereafter joined the Police Department. There was no break in the services. Not only that but even the petitioner also paid the Notice Pay, which is confirmed from the entry in the Service Book of the petitioner. Considering the Government Resolutions dated 31.1.1990 and 28.8.1990, if a Government employee was serving as a Teacher in Government institutions and/or the Government department is appointed in any other department then his past services is required to be considered for the purpose of pension. On going through the aforesaid Government Resolutions, there is no justification for denying the said benefit and/or counting his past services. It also appears that so far as employees like Shri R.Y.Gandhi and Shri D.K.Parmar, who were also

serving along with the petitioner are concerned, their past services have been considered for the purpose of pension. Under the circumstances, the action of the respondents in not considering and counting the period of service between 22.9.1959 to 14.6.1967 for the purpose of pension is absolutely illegal and contrary to the aforesaid Resolutions. Even considering the judgment and order passed by this Court dated 6.8.1999 passed in Special Civil Application No.8580 of 1989, the petitioner is also entitled to the benefit of his past services for the purpose of pension.

8. For the reasons stated above, the petition succeeds. The respondents are directed to consider services of the petitioner for the period between 22.9.1959 to 14.6.1967 for the purpose of pension and accordingly, re-fix the pension. The said exercise to be done within a period of 2 months from the date of receipt of this order and the balance/difference, if any, to be paid to the petitioner within a period of 3 months thereafter. Rule is made absolute to

the aforesaid extent, however, there shall be no order as to costs.

[M.R.SHAH, J.]

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